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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>DANIEL BRIAN CARRILLO,<br><br>Defendant and Appellant. | B215973<br><br>(Los Angeles County<br>Super. Ct. No. NA077952) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Gary J. Ferrari, Judge. Reversed.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Susan S. Kim, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant appeals his conviction of one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),[1] with true findings he had previously suffered a conviction for a serious or violent felony (§ 1170.12, subds. (a)–(d), 667, subd. (b)–(i)) and a conviction for a serious felony (§ 667, subd. (a)(1)). After a sanity phase, the trial court found defendant was sane at the time of the incident. Defendant contends the trial court committed instructional error with respect to his defense of self-defense, and erred in finding he was sane at the time of the offense. We find the trial court erred in instructing the jury, and reverse.

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### A. Prosecution Case.

On April 3, 2008, defendant and Charles Thompkins lived in a sober living facility in Long Beach. Thompkins had been living there three days, and they shared a room with two other roommates. Thompkins owned a Smith & Wesson nine-millimeter automatic and a .22-caliber revolver. The guns were unregistered and Thompkins kept them unloaded in a lockbox. The day before the incident, Thompkins had showed one of the guns to defendant because he was considering selling it for $300 to raise rent money, but decided against the sale because "it just didn't seem right." Defendant was upset that Thompkins would not sell the gun to him. Thompkins put the gun in his boot in the closet area when defendant was not looking.

A man named Ray lived in another apartment at the facility. Thompkins, who had befriended Ray, invited him to the apartment he shared with defendant. Defendant did not like Ray, and they had a disagreement. The three men ate some food, and defendant went to the store and returned with some whiskey. The men drank the whiskey, and about 15 minutes later, Ray left the apartment. It was dark outside. At the time, there was a man named Joseph in the apartment.[2]

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[1] All statutory references are to the Penal Code unless otherwise indicated.

[2] Police do not know Joseph's whereabouts.

The lights were on in the apartment. Thompkins noticed defendant was restless, and defendant told him he was upset that Ray was there. Defendant started to hit Thompkins in the face and chest, and hit him at least 15 times. Thompkins pushed defendant away with his foot, but defendant kept attacking him. Thompkins tried to leave the apartment, but there were too many locks on the screen door and front door. Defendant grabbed Tompkins's cane from near the door and began to hit Thompkins on the head until the cane broke. Defendant tried to hit Thompkins in the eye, but missed, striking him underneath his eye.

Thompkins left the apartment, and spoke to the police who had arrived. He could see the lights were still on in the apartment. The sober living facility manager drove Thompkins to the hospital, where he received treatment for his lacerations. After defendant attacked him, Thompkins moved out of the facility.

Long Beach Police Detective David Demasi responded to the incident. He saw Thompkins in the courtyard of the facility, being treated by paramedics. Thompkins had blood on his face and in his hair, and many lacerations on his face. Thompkins, who had alcohol on his breath, told Detective Demasi that defendant had attacked him after they argued about Ray's presence in the apartment. Thompkins was able to speak clearly, and told Detective Demasi that he had left the living room to get a blanket, and when he came back, defendant said, "'you want to hit me, don't you?'" and defendant started hitting him.[3]

Detective Demasi and Thompkins walked to the apartment and saw defendant sitting on the couch with blood spattered on his arms. Detective Demasi did not observe any injuries on defendant, nor was he receiving any medical treatment. The cane was up against the couch and had blood on its handle and jagged edge. There was blood on the couch and on the wall near the door.

Detective Demasi advised defendant of his rights, put him in handcuffs, and spoke to him. Demasi smelled alcohol on defendant and observed that defendant's speech was

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[3] At trial, Thompkins denied making this statement.

slurred, and he was sweating and grinding his teeth. Thompkins's unloaded gun was in his boot, and another was in a lockbox underneath the bed. Thompkins's lockbox was opened by police with a key Thompkins provided. Police ran the serial numbers of the guns and determined they were not stolen.

**B. Defense Case.**

Defendant testified on his own behalf at trial. Both defendant and Thompkins were at the sober facility because they were recovering alcoholics. He and Thompkins shared a one-bedroom apartment. Defendant had broken his arm a few months previously, and had a screw and some pins in it. A day or two before the altercation, Thompkins had shown him a gun and said Ray wanted to buy the gun.

On the date of the incident, defendant came home and found Thompkins and Ray in the apartment. Defendant did not like Ray because Ray had tried to kill him. Shortly before, when defendant saw Ray in the courtyard, Ray told him that he knew the "gangster" who had broken defendant's arm. Defendant replied, "'we'll go out in the street and settle it,'" to which Ray responded, "how about if I just kill you?"

Defendant ordered some food, and said he would share it with Ray and Thompkins. Defendant went to the store to get some whiskey, and they drank the whiskey, ate the food, and watched television. Defendant did not drink much, but had a 24-ounce beer.

Defendant went into the bathroom. When he came out of the bathroom, the lights were off except for the television and he was in the dark hallway. A figure approached and yelled at him. Defendant did not realize it was Thompkins who was yelling at him. Defendant grabbed the man by the throat and hit him three or four times. He did not know whether it was Ray or Thompkins he was hitting, but was afraid that it was Ray because Ray might hurt him. Defendant grabbed an African stick and hit the man on the head. The stick broke and caused the man to bleed. He did not intend to hit the man in the eye, and believed the man was trying to block his escape from the apartment. At some point, defendant realized his reaction was "too much."

Defendant claimed his life was in danger. He had previously seen weapons inside the apartment, including Thompkins's guns and two baseball bats. After hitting the man, defendant realized it was Thompkins and that Ray had left the apartment. He went to get a sock so Thompkins could wipe off the blood. Defendant was not injured and did not receive medical aid.

When Detective Demasi arrived, defendant told him that he was in the apartment when Thompkins started yelling at him, and when defendant tried to leave the apartment, Thompkins blocked his exit. Defendant felt threatened and hit Thompkins in the face. Defendant told the detective to look behind the door for baseball bats, and that Thompkins had guns. Defendant did not mention that Ray had been in the apartment or that there was an African stick.

**C. Rebuttal**.

Detective Demasi testified that after reading defendant his *Miranda*[4] rights, defendant told him that he was in the apartment when Thompkins began yelling. Defendant tried to leave, but Thompkins would not let him. Defendant hit Thompkins five times. Detective Demasi asked defendant if he hit Thompkins with a cane, but defendant repeated his statement that Thompkins would not let him leave. Defendant told him about the baseball bats behind the door, but Detective Demasi did not find any. Defendant did not mention an African stick, or that it was dark inside the apartment. From what Detective Demasi could see, the lights were on.

## DISCUSSION

### I. INSTRUCTIONAL ERROR.[5]

Defendant contends the trial court erred in instructing on self-defense to an assault by (1) omitting both the word "wrongful" [6] and the last paragraph from CALJIC No.

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[4] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

[5] Although we find the trial court's failure to properly instruct on self-defense and mistake of fact requires reversal, we discuss each issue defendant raises in this appeal in order to assist the trial court on remand.

9.00, (2) failing to instruct the jury on the defense of antecedent threats, and (3) failing to instruct sua sponte on mistake of fact. We conclude the trial court erred in instructing on these three issues and the cumulative impact of the errors was that the trial court gave the jury inadequate instruction on defendant's theory of self-defense.

Jury instructions are not considered in isolation, but rather in the context of the entire charge and the arguments of the parties. (*People v. Young* (2005) 34 Cal.4th 1149, 1202.) In assessing a claim of instructional error, we view the challenged instruction in the context of the instructions as a whole and the trial record to determine whether there is a reasonable likelihood that the jury applied the challenged instruction in a manner that violated the Constitution. (*People v. Jablonski* (2006) 37 Cal.4th 774, 831.) In doing so, we assume that the jurors are intelligent persons and capable of understanding and correlating all jury instructions given to them. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1148–1149.) Instructions should be interpreted, if possible, to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation. (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) "The crucial assumption underlying our constitutional system of trial by jury is that jurors generally understand and faithfully follow instructions." (*People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17.)

**A. CALJIC No. 9.00**

Defendant contends the court erred in instructing the jury with CALJIC No. 9.00[7] by omitting the word "unlawfully," and by omitting the final paragraph. He argues that

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[6] Although the instruction omitted the word "unlawfully," defendant argues the omitted word was "wrongful."

[7] CALJIC No. 9.00 provides in relevant part, "In order to prove an assault, each of the following elements must be proved: [¶] 1. A person willfully [*and unlawfully*] committed an act which by its nature would probably and directly result in the application of physical force on another person; [¶] 2. The person committing the act was aware of facts that would lead a reasonable person to realize that as a direct, natural and probable result of this act that physical force would be applied to another person; and [¶] 3. At the time the act was committed, the person committing the act had the present ability to apply physical force to the person of another. . . . [¶] [*A willful application of physical force upon the person of another is not unlawful when done in lawful [self-defense] [or]*

because an assault must be unlawful, the omission was prejudicial to his defense; furthermore, it was not cured by the giving of other instructions on self-defense because they did not state an assault must be unlawful and did not instruct on the prosecution's burden of proof with respect to self-defense. The prosecution, apparently conceding the error in the omissions, contends defendant forfeited the issue by failing to raise it in the trial court, and in any event, any error was harmless because the jury received other instructions informing it that an assault required an unlawful attack.

Although defendant forfeited the argument by failing to raise it at the time of jury instruction (*People v. Guerra*, *supra*, 37 Cal.4th at p. 1134), we nonetheless consider the merits of his contentions. Given the evidence at trial and the fact the claim of self-defense was properly tendered, we find it was error for the trial court to omit the words "unlawfully" and the bracketed last paragraph of CALJIC No. 9.00, and the error was prejudicial.

*1. Omission of "Unlawfully" from CALJIC No. 9.00.*

An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (§ 240.) Self-defense against an assault requires an actual and reasonable belief in the need to defend against an imminent danger of bodily injury. (*People v. Jefferson* (2004) 119 Cal.App.4th 508, 518.) The jury must consider what would appear to be necessary to a reasonable person in the position of the defendant, with the defendant's knowledge and awareness. (*Ibid.*) Self-defense is limited to the use of force that reasonably appears to be necessary to resist the other party's misconduct; the use of excessive force destroys the justification. (*People v.*

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*[defense of others]. The People have the burden to prove that the application of physical force was not in lawful [self-defense] [defense of others]. If you have a reasonable doubt that the application of physical force was unlawful, you must find the defendant not guilty.*]"

The italicized portions were omitted from the jury instruction given in this case.

The use note for CALJIC No. 9.00 provides that "[t]he last bracketed paragraph should only be used where there is a defense of self-defense and should be given with CALJIC 5.30 and other appropriate instructions."

*Hardin* (2000) 85 Cal.App.4th 625, 629–630.) In other words, if there is a reasonable doubt whether the defense applies—i.e., a reasonable doubt whether the defendant reasonably believed he was in imminent danger of bodily injury, reasonably believed immediate use of force was necessary to defend, and used no more force than was reasonably necessary—the jury must acquit.

Here, the jury was instructed with CALJIC No. 5.30 (self-defense to an assault),[8] CALJIC No. 5.52 (self-defense—when danger ceases),[9] CALJIC No. 5.53 (self-defense not an excuse after adversary disabled),[10] and CALJIC No. 5.55 (plea of self-defense may not be contrived).[11] Although CALJIC No. 5.30 fills in the omission from the version of CALJIC No. 9.00 given here because it references that a person may *lawfully* act in self-defense, it is reasonably probable that its omission from the instruction, coupled with the omission of the last bracketed paragraph (discussed *infra*), confused the jury about the application of self-defense to this case. The jury could have overlooked defendant's claim of self-defense because the instructions on assault neglected to mention

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[8] CALJIC No. 5.30 as given here stated, "It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, that person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent."

[9] CALJIC No. 5.52 as given here stated, "The right of self-defense exists only as long as the real or apparent threatened danger continues to exist. When the danger ceases to appear to exist, the right to use force in self-defense ends."

[10] CALJIC No. 5.53 as given here stated, "The right of self-defense ends when there is no longer any apparent danger of further violence on the part of an assailant. Thus where a person is attacked under circumstances which justify the exercise of the right of self-defense, and thereafter the person uses enough force upon his attacker as to render the attacker incapable of inflicting further injuries, the right to use force in self-defense ends."

[11] CALJIC No. 5.55 as given here stated, "The right of self-defense is not available to a person who seeks a quarrel with the intent to create a real or apparent necessity of exercising self-defense."

that where a person has reasonable grounds for believing bodily injury is about to be inflicted on him, he or she may act to defend themselves.

*2. Omission of Last Paragraph of CALJIC No. 9.00.*

When a jury is instructed on self-defense, it is informed that the prosecution must prove beyond a reasonable doubt that the defendant's conduct was not justified. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340–341.) In *Adrian*, the defendant asserted self-defense to the charged crime of assault with a deadly weapon. A *Sanchez*[12] pinpoint instruction, similar to the bracketed portion of CALJIC No. 9.00 that "the defendant is entitled to an acquittal if the evidence raises a reasonable doubt of self-defense" was requested, but not given. (*Adrian*, at p. 336.) *Adrian* held that in assault and battery cases, if there is substantial evidence to support it, the bracketed portion of CALJIC No. 9.00 must be given. "Self-defense negates culpability for assaultive crimes, whether or not the assault results in death. [Citations.] In either event self-defense goes directly to guilt or innocence." With respect to guilt, the burden of persuasion is on the prosecution. (*Id*. at pp. 340–341.) Nonetheless, *Adrian* found the error harmless because the other instructions, including substantive self-defense instructions and CALJIC No. 2.01,[13] informed the jury that the defendant was not guilty of assault if engaged in the act of self-defense. (*Id.* at p. 342.)

Here, the court's error in excluding the bracketed portion of CALJIC No. 9.00 was prejudicial. Unlike *Adrian*, the trial court here did not give the jury CALJIC No. 2.01, which would have informed the jury of the prosecution's burden of persuasion. CALJIC No. 2.01, in conjunction with CALJIC No. 5.30, would have explained to the jury that the defendant would not be guilty of assault if engaged in self-defense, and that it was the prosecution's burden to negate the claim of self-defense beyond a reasonable doubt.

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[12] *People v. Sanchez* (1947) 30 Cal.2d 560.

[13] The relevant portion of CALJIC No. 2.01 given in *Adrian* instructed, "each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt." (*People v. Adrian*, *supra*, 135 Cal.App.3d at p. 342.)

(*People v. Adrian, supra*, 135 Cal.App.3d at p. 342.) Without this critical explanation, it is reasonably probable that the jury would have reached a different result in assessing defendant's claim of self-defense.

**B. Antecedent Threats**

Defendant contends that the court failed in refusing to instruct with CALJIC No. 5.50.1[14] (antecedent threats) because he believed that Ray had previously threatened him, and that Ray and Thompkins conspired to harm him. The prosecution contends the evidence does not support the instruction because there was no evidence the victim, Thompkins, threatened defendant; further, any omission of the instruction was harmless because defendant was able through counsel's argument to the jury to weave any threats into the context of his claim of self-defense.

A defendant asserting self-defense is entitled to an instruction on the effect of antecedent threats or assaults by the victim on the reasonableness of defendant's conduct. (*People v. Gonzales* (1992) 8 Cal.App.4th 1658, 1663–1664.) In *People v. Pena* (1984) 151 Cal.App.3d 462, defendant asserted self-defense after he shot a man in a bar after a short conversation. He claimed the victim had threatened him, and in addition, he had seen the victim beat two young girls on a prior occasion and knew that the victim regularly carried a gun. (*Id*. at p. 476.) *Pena* held the jury was entitled to consider all the facts that bore on the reasonableness of defendant's belief that he was in immediate danger. (*Id*. at pp. 475–476.) In *People v Minifie* (1996) 13 Cal.4th 1055, the court noted that with respect to a claim of self-defense, "'[t]he defendant's perceptions are at issue,

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[14] CALJIC No. 5.50.1 provides, "Evidence has been presented that on [a] prior occasion[s] the alleged victim [threatened] [or] [assaulted] [or participated in an assault or threat of physical harm upon] the defendant. If you find that this evidence is true, you may consider that evidence on the issues of whether the defendant actually and reasonably believed [his] [her] life or physical safety was endangered at the time of the commission of the alleged crime. [¶] In addition, a person whose life or safety has been previously threatened, or assaulted by [another] [others] is justified in acting more quickly and taking harsher measures for self protection from an assault by [that person] [those persons], than would a person who had not received threats from or previously been assaulted by the same person [or persons]."

and threats . . . may color a person's perceptions . . . . Such threats are relevant to the defendant's state of mind—a matter "of consequence to the determination of the action" . . . and the trier of fact is entitled to consider those threats along with other relevant circumstances in deciding whether the defendant's actions were justified."""  (*Id.* at pp. 1065–1066.)

Here, the jury should have been instructed it could consider Ray's threats against defendant in evaluating the reasonableness of defendant's belief that he needed to defend himself against the man attacking him, who defendant believed was Ray. This instruction was factually consistent with defendant's theory of self-defense based on Ray's behavior prior to the assault and his belief that Ray was the one attacking him. Given the court's failure to properly instruct on self-defense to an assault in CALJIC No. 9.00, it is reasonably probable the jury would have found defendant not guilty if it had been permitted to consider the his defense in the context of a complete set of relevant instructions.

**C. Mistake of Fact.**

Defendant contends the court erred in failing to sua sponte instruct on the defense of mistake of fact, and the failure was prejudicial because his defense rested on a theory of self-defense against an attack from a man he mistakenly believed was Ray. The prosecution contends the issue was forfeited because defendant failed to ask for the instruction, and in any event, the court had no duty to instruct on the issue because defendant did not testify he believed it was Ray, but instead did not know who was attacking him, and any error was harmless because other instructions on self-defense cured the omission.

A trial court's duty to instruct, sua sponte, on particular defenses arises only if it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case. (*People v. Maury* (2003) 30 Cal.4th 342, 424.) """[A]n honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which the person is indicted an innocent act, has always been held to be a good

defense.”’” (*People v. Lucero* (1988) 203 Cal.App.3d 1011, 1016.) Mistake of fact is an affirmative defense on which the defendant bears the burden of proof. (*In re Jennings* (2004) 34 Cal.4th 254, 280.) “‘A mistake of fact defense is not available unless the mistake disproves an element of the defense.’” (*People v. Noori* (2006) 136 Cal.App.4th 964, 977.)

Here, a theory of mistake of fact was relevant to defendant's defense because defendant testified he was afraid of the man who attacked him, believing it was Ray who had previously threatened him. Defendant kept hitting the man until he realized it was Thompkins. The contention that defendant would not have hit the victim had he known the victim's true identity was relevant to whether, at the time he acted, he believed he was in imminent danger of harm. Therefore, the instruction was warranted under the facts of the case. Further, given that the court erred in instructing on self-defense to an assault and omitted an instruction on antecedent threats, it is reasonably probable that this error affected the jury's verdict.

## II. INSANITY PHASE.

Defendant contends that the trial court erred in rejecting his insanity defense because it erroneously focused on whether his version of events seemed rational, rather than whether defendant at the time of the offense was capable of knowing or understanding his act or distinguishing right from wrong.

### A. Factual Background.[15]

#### *1. Defense.*

Ronald Fairbanks, PhD. testified for defendant that in his opinion, defendant suffered from schizophrenia, and that he could have suffered from schizophrenia at the time of the incident. Dr. Fairbanks examined defendant twice, once in September 2008 and once in December 2008. He ran several tests on defendant and conducted a psychological assessment.

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[15] Defendant waived a jury trial on the sanity phase.

Defendant was not taking his medication at the time of the incident, and had been drinking alcohol. Dr. Fairbanks, in response to a question whether defendant knew right from wrong "as having a clear vision of reality," stated that defendant was confused, had schizophrenia and bipolar disorder. Defendant did not appear to be malingering.

In Dr. Fairbank's opinion, defendant did not understand the nature and quality of his act relative to reality at the time of the incident.

However, defendant understood that he was hitting a person that he needed to defend against at the time of the incident. In his interviews with Dr. Fairbanks, defendant confused Ray with Thompkins. Defendant understood the concept of self-defense, and the difference between attacking someone without a justification. Defendant was focused on weapons, and kept mentioning bats behind the door. Dr. Fairbanks found defendant to be "paranoid and fearful" he was going to be attacked, and believed he had to defend himself.

Defendant testified on his own behalf that he spoke to the prosecution's sanity expert, Dr. Kaushal Sharma, for about 15 minutes.

*2. Prosecution.*

Dr. Kaushal Sharma testified for the prosecution that he evaluated defendant in jail in December 2008 for about 45 minutes. He did not conduct any psychological testing. Defendant told him at the interview that he was living in a sober living facility on April 3, 2008, and that night there were three people in defendant's room: Ray, defendant, and Thompkins. The three men were sitting around talking and drinking. Defendant was unhappy that Thompkins had invited Ray because defendant did not like Ray. After using the restroom, defendant went into the hallway and Thompkins told him, "'I can bring anyone I want to'" to their apartment. Defendant told Dr. Sharma he overreacted and started hitting Thompkins with his fists. After Thompkins fell to the ground, defendant hit him with a cane. Defendant was not confused about the identity of the victim.

In Dr. Sharma's opinion, defendant suffered from schizophrenic disorder, but he did not test defendant to confirm his diagnosis. Defendant was taking an antidepressant

(Zolofft) and an anti-psychotic (Risperdal), and Dr. Sharma believed the medication was effective to control defendant's symptoms. Defendant believed he may have been off his medication before the incident; but Dr. Sharma was unable to conclude whether defendant was medicated at the time of the incident.

Dr. Sharma did not believe defendant met the legal criteria for insanity. "If I accept the fact that he's mentally ill and even if I accept the fact that he was not taking medication, he did not describe to me any symptoms in the time frame when the incident happened." Defendant did not describe any delusions about the victim or tell Dr. Sharma that he was hallucinating and the voices were telling him to attack the victim. Dr. Sharma opined that "in the absence of any delusions or hallucinations and there is a more logical explanation for his behavior, which is the anger based on Ray coming there at the invitation of the victim, [defendant's] act was due to anger and not due to mental illness and, therefore, I believed he knew the nature and quality of his act and that his actions were wrong." The fact that defendant told Dr. Fairbanks he heard voices at the time of the incident would not change Dr. Sharma's opinion.

Dr. Sharma testified a schizophrenic might have difficulty recalling an event because of irrational and disorganized thought processes. Once a schizophrenic starts taking his medication, he can come up with a more logical explanation of something that occurred while he was not taking his medication. Dr. Sharma testified that "this is not an indication the person is lying but they will try to make sense out of something which was not sensible to begin with." Thus, defendant's nonsensical description of events given to Dr. Fairbanks at an earlier time could have changed to a more logical version by the time he spoke to Dr. Sharma.

The court noted that defendant's testimony regarding what occurred when he left the bathroom, attacked the man who was shouting at him, pushed him on the couch, and stopped when he realized he was "'going too far,'" was rational and logical. The court did not find defendant's conduct "so irrational" that it would bring him within the definition of insanity. The court found defendant was sane at the time of the attack on Thompkins.

**B. Discussion.**

A defendant is presumed to have been sane at the time he or she committed an offense. (§ 1026, subd. (a); *People v. Jefferson*, *supra*, 119 Cal.App.4th at p. 519.) A defendant may plead not guilty to the substantive charges and deny any special allegations, and join that plea with a plea of "[n]ot guilty by reason of insanity." (§ 1016, subd. (2), (6).) When such pleas are entered, the court conducts a bifurcated trial and the issues of guilt and sanity are separately tried. (*People v. Hernandez* (2000) 22 Cal.4th 512, 520.)

"Insanity, under California law, means that at the time the offense was committed, the defendant was incapable of knowing or understanding the nature of his act or of distinguishing right from wrong. [Citations.]" (*People v. Hernandez*, *supra*, 22 Cal.4th at p. 520.) "The 'sanity trial is but a part of the same criminal proceeding as the guilt phase' [citation] but differs procedurally from the guilt phase of trial 'in that the issue is confined to sanity and the burden is upon the defendant to prove by a preponderance of the evidence that he was insane at the time of the offense' [citation]." (*Id*. at p. 521.) The defense of not guilty by reason of insanity "shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." (§ 25, subd. (b).) We review the trial court's findings on the issue of insanity for substantial evidence. (*People v. Chavez* (2008) 160 Cal.App.4th 882, 891.)

Here, although the court focused on defendant's rationality in making its ruling, we find no error because substantial evidence supports the trial court's conclusion that defendant was legally sane at the time of the incident. Dr. Sharma testified that defendant was sane based upon his examination of defendant; his opinion was not affected by Dr. Fairbanks's testimony that defendant told Dr. Fairbanks he was hearing voices at the time of the incident; defendant told Dr. Sharma he was angry with Thompkins for inviting Ray to their room and they argued about it; and defendant knew he was hitting Thompkins. Dr. Sharma concluded that defendant knew that the nature

and quality of his act was wrong. Although Dr. Fairbanks and Dr. Sharma reached different conclusions regarding defendant's sanity, we will not substitute our determination for the factfinder where substantial evidence supports its conclusion. (*People v. Chavez, supra,* 160 Cal.App.4th at p. 891 [where testimony on defendant's sanity is in conflict, there is no basis on which appellate court will disturb factfinder's conclusion].)

**DISPOSITION**

The judgment of the superior court is reversed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.